

The following Listing of Claims will replace all prior versions, and listings, of claims in the application.

**LISTING OF CLAIMS:**

1. (Cancelled)

2. (Cancelled)

3. (Currently Amended) The A fail-safe control method for an internal combustion engine described in Claim 2, and further comprising:

determining when a throttle valve in an intake system of the internal combustion engine is stuck in a fixed position;

controlling a throttle aperture to maintain the throttle valve aperture in the fixed position and to increasing the throttle valve aperture of the throttle valve when the an amount of fuel injection is less than the a prescribed amount, [[ ( )] including zero[[ ( ) ]];

operating a fail-safe control to ensure a prescribed torque in the engine; and

performing recovery diagnostics while fail-safe control is being performed to

determining whether the fixed state of the throttle valve has been released on increasing the throttle aperture.

4. (Currently Amended) The A fail-safe control method for an internal combustion engine described in Claim 1, wherein comprising:

determining when a throttle valve in an intake system of the internal combustion engine is stuck in a fixed position;

controlling a throttle valve aperture to maintain the throttle valve aperture in the fixed position;

operating a fail-safe control to ensure a prescribed torque in the engine, by the fail-safe control controls the increasing an amount of fuel injection by increasing it to become more than beyond the amount of fuel injection set when normal control of air intake volume is performed when maintaining the throttle valve aperture in the fixed state.

5. (Currently Amended) The fail-safe control method ~~for an internal combustion engine described in~~ of Claim 4, wherein

the operating of the fail-safe control ~~performs control by~~ further includes suppressing the an occurrence of smoke when the an air-fuel ratio is less than the a prescribed mixture, or is a rich mixture, when said the amount of fuel injection has been increased.

6. (Currently Amended) The fail-safe control method for an internal combustion engine described in Claim 5, wherein

the ~~control for~~ suppressing of the occurrence of smoke includes ~~a control to delaying~~ the a fuel injection timing more than when normal control is performed.

7. (Currently Amended) The fail-safe control method ~~for an internal combustion engine described in~~ of Claim 5, wherein

the ~~control for~~ suppressing of the occurrence of smoke includes ~~a fuel injection control that dividings~~ the fuel injection during a combustion cycle into a reserve fuel injection and a main fuel injection so that the a reserve fuel injection timing is ~~on the~~

advanced ~~side~~ and the ~~a~~ main fuel injection timing is ~~on the~~ delayed side as compared to when normal control is performed.

8. (Currently Amended) The fail-safe control method ~~for an internal combustion engine described in~~ of Claim 5, wherein

the ~~control for~~ suppressing of the occurrence of smoke includes a ~~fuel injection control that dividing~~ the fuel injection during a combustion cycle into a reserve fuel injection and a main fuel injection so that a volume ~~the proportion of the~~ reserve fuel injection is reduced or eliminated as compared to during normal control.

9. (Currently Amended) The fail-safe control ~~device~~ method ~~for an internal combustion engine described in~~ of Claim 5, wherein

the ~~control for~~ suppressing of the occurrence of smoke includes a ~~control that~~ reducinges or stoppings the an EGR rate.

10. (Currently Amended) ~~The~~ A fail-safe control ~~device~~ method for an internal combustion engine ~~described in Claims 1, wherein~~ comprising:

determining when a throttle valve in an intake system of the internal combustion engine is stuck in a fixed position;

controlling a throttle valve aperture to maintain the throttle valve aperture in the fixed position; and

operating a fail-safe control to ensure a prescribed torque in the engine in which the fail-safe control includes preventing a regeneration control of an exhaust micron particle collecting device in an exhaust system from regenerating when the throttle valve is

~~determined to be stuck in the fixed position and the internal combustion engine is provided with an exhaust micron particle collecting device in the exhaust system that performs regeneration control while closing the throttle aperture and raising the exhaust temperature to eliminate the exhaust micron particles collected in said exhaust micron particle collecting device and when said throttle valve is diagnosed as being stuck, stops said regeneration control and switches to said switching to the fail-safe control.~~

11. (Cancelled)

12. (Currently Amended) The A fail-safe control device for an internal combustion engine described in Claim 11, wherein comprising:

a throttle valve;

a diagnostic for determining a position of the throttle valve; and

a control unit for controlling a throttle valve aperture when the throttle valve is stuck in a fixed position by maintaining the throttle valve aperture in the fixed position, the control unit further performing a control for suppressing the an occurrence of smoke further comprises a control to by delaying a start of a the fuel injection timing more than when normal control is performed.

13. (Currently Amended) A ~~The~~ fail-safe control device described in Claim 11, wherein for an internal combustion engine, comprising:

a throttle valve;

a diagnostic for determining a position of the throttle valve; and

a control unit for controlling a throttle aperture when the throttle valve is stuck in a fixed position, the control unit performing a fuel injection control for suppressing the an

occurrence of smoke ~~comprises a fuel injection control that divides the injection into~~ includes  
a reserve fuel injection and a main fuel injection during a combustion cycle so that ~~the a~~  
reserve fuel injection timing is ~~on the advanced~~ side and ~~the a~~ main fuel injection timing is ~~on~~  
the delayed side as compared to when normal control is performed.

14. (Currently Amended) A The fail-safe control device ~~described in Claim~~  
~~11, wherein~~ for an internal combustion engine, comprising:

a throttle valve;

a diagnostic for determining a position of the throttle valve;

a control unit for controlling a throttle aperture when the throttle valve is stuck in a  
fixed position; and

~~the a~~ control unit for suppressing ~~the an~~ occurrence of smoke by dividing ~~the~~  
injection into reserve fuel injection and main fuel injection so that ~~the a~~ volume ~~proportion~~ of  
reserve fuel injection is reduced or eliminated as compared to during normal control.

15. (Currently Amended) The fail-safe control device described in ~~Claim 11~~  
Claim 12, wherein

the control unit further performs a control for suppressing the occurrence of smoke  
~~further comprises a control that~~ by reducing or stopping ~~the an~~ EGR rate.

16. (Original) ~~The A~~ fail-safe control device ~~described in Claim 11, wherein~~  
for an internal combustion engine, comprising:

a throttle valve;

a diagnostic for determining a position of the throttle valve; and

a control unit for controlling a throttle valve aperture when the throttle valve is stuck in a fixed position, ~~the engine further comprises:~~

the control unit being configured to be operatively coupled to an exhaust micron particle collecting device in the an exhaust system that performs regeneration control while closing the throttle valve aperture and raising the an exhaust temperature to eliminate the exhaust micron particles collected in the exhaust micron particle collecting device, and the control unit being further configured to switch from the regeneration control to a fail safe control when the throttle valve is diagnosed as being stuck, ~~stops said regeneration control and switches to the fail safe control.~~